

RK

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JAMES HARVIN AND RENEE HARVIN

CIVIL ACTION

vs.

NO.

13 4746

LOWE'S AND PATRICK KIRBY

PETITION FOR REMOVAL

TO: THE HONORABLE JUDGES OF THE DISTRICT COURT FOR
EASTERN DISTRICT OF PENNSYLVANIA

As removing party, LOWE'S HOME CENTERS, INC. (i/d/a LOWE'S), files this Notice of Removal of the above-captioned matter from the Court of Common Pleas, Philadelphia County, the Court in which it is now pending to the United States District Court for the Eastern District of Pennsylvania. In support thereof, Defendant avers as follows:

1. This action was commenced by way of Complaint filed in the Court of Common Pleas, Philadelphia County on or about July 23, 2013, and docketed as No. 130703020. (A true and correct copy of Plaintiffs' Complaint is attached hereto and marked as Exhibit "A").

2. This notice is timely, having been filed within thirty (30) days of Plaintiffs having filed the Complaint.

3. At the time this action was commenced and continuing to the present, Defendant, LOWE'S HOME CENTERS, INC. (i/d/a LOWE'S), is a corporation organized under the laws of the State of North Carolina and having its principal place of business in North Carolina.

4. Based upon the allegations in the Complaint, at the time this action was commenced and continuing to the present, Plaintiffs, James and Renee Harvin, were citizens of the Commonwealth of Pennsylvania.

5. The Complaint is silent as to the citizenship of Defendant, Patrick Kirby, at the time this action was commenced and continuing to the present. Instead, the Complaint states the addresses where Mr. Kirby purported worked at the time of the incident and at present. Regardless, there is no independent claim asserted against Mr. Kirby. Instead, the references to Mr. Kirby relate to activities in the course and scope of his employment. “[J]oinder is fraudulent if there is no reasonable basis in fact or colorable ground supporting the claim against the joined defendant, or no real intention in good faith to prosecute the action against the defendant or seek a joint judgment.” Moore v. Johnson & Johnson, 907 F.Supp.2d 646, 662 (E.D. Pa. 2012) (citation omitted). Thus, Mr. Kirby has been fraudulently joined.

6. “[A]n action can be removed despite the existence of forum-state or non-diverse defendants if those parties were ‘fraudulently’ named as defendants with the sole purpose of defeating federal jurisdiction.” Id. “A finding of fraudulent joinder permits the district court to disregard the citizenship of such non-diverse or forum defendants, assume jurisdiction over the action, dismiss any such fraudulently joined defendants, and retain jurisdiction over the case.” Id.

7. Moving Defendant believes and therefore avers that the amount in controversy, based upon the allegations in the Complaint and Plaintiffs' attorney's representation that Plaintiffs would not stipulate to damages less than \$75,000.00, will exceed the jurisdictional amounts required for jurisdiction to exist in District Court, exclusive of interest and costs.

8. This action is removable from State Court to this Court based upon diversity of citizenship pursuant to 28 U.S.C. §1332(a)(1) and 28 U.S.C. §1441(a).

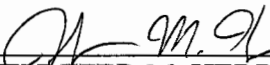
9. This Court has full and exclusive jurisdiction over this case which involves the aforementioned federal acts.

WHEREFORE, moving Defendant, LOWE'S HOME CENTERS, INC. (i/d/a LOWE'S), respectfully requests that the above-captioned action be removed from the Court of Common Pleas, Philadelphia County to the District Court for the Eastern District of Pennsylvania.

Respectfully submitted,

**MINTZER, SAROWITZ, ZERIS, LEDVA
& MEYERS, LLP**

BY:


JENNIFER M. HERRMANN, ESQUIRE
Attorney for Defendant(s), LOWE'S HOME CENTERS,
INC. (i/d/a LOWE'S) AND PATRICK KIRBY
Attorney I.D. No. 315453
Centre Square, West Tower
1500 Market Street, Suite 4100
Philadelphia, PA 19102
(215) 735-7200
MSZL&M File No. 003830.000004

CERTIFICATE OF SERVICE

I, JENNIFER M. HERRMANN, ESQUIRE, do hereby certify that a true and correct copy of the within PETITION FOR REMOVAL was forwarded by U.S. Mail, postage pre-paid on the 14th day of August, 2013 as follows:

Bruce M. Rotfeld, Esquire
BRUCE M. ROTFELD, P.C.
1500 Walnut Street, Suite 307
Philadelphia, PA 19102

**MINTZER, SAROWITZ, ZERIS, LEDVA
& MEYERS, LLP**

BY:

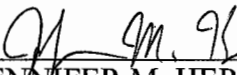

JENNIFER M. HERRMANN, ESQUIRE
Attorney for Defendant(s), LOWE'S HOME CENTERS,
INC. (i/d/a LOWE'S) AND PATRICK KIRBY
Attorney I.D. No. 315453
Centre Square, West Tower
1500 Market Street, Suite 4100
Philadelphia, PA 19102
(215) 735-7200
MSZL&M File No. 003830.000004

EXHIBIT “A”

Bruce M. Rotfeld, P.C.
By: Bruce M. Rotfeld, Esquire
Identification No. 33954
1500 Walnut St., Ste. 307
Philadelphia, PA 19102
Tel. (215) 569-9490

Attorney for Plaintiff



MAJOR CASE – NON JURY

JAMES HARVIN
RENEE HARVIN, h/w
7960 Forrest Avenue
Philadelphia, PA 19150

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS

vs.

TERM, 2013

NO.

LOWE'S
2106 S. Christopher Columbus Blvd.
Philadelphia, PA 19148

and

PATRICK KIRBY
3800 Aramingo Avenue
Philadelphia, PA 19137

COMPLAINT
2S – SLIP AND FALL

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y notificacion. Hace falta asentar una comparencia escrita o en persona o con abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NOT TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Philadelphia Bar Association
Lawyer Reference Service
One Reading Center
Philadelphia, PA 19107
(215) 238-6333
TTY (215) 451-6179

Asociacion de Licenciados de Filadelfia
Servicio De Referencia E Informacion Legal
One Reading Center
Philadelphia, PA 19107
(215) 238-6333
TTY (215) 451-6179

Bruce M. Rotfeld, P.C.
 By: Bruce M. Rotfeld, Esquire
 Identification No. 33954
 1500 Walnut St., Ste. 307
 Philadelphia, PA 19102
 Tel. (215) 569-9490

Attorney for Plaintiff

MAJOR CASE – NON JURY

JAMES HARVIN
 RENEE HARVIN, h/w
 7960 Forrest Avenue
 Philadelphia, PA 19150

vs.

PHILADELPHIA COUNTY
 COURT OF COMMON PLEAS

TERM, 2013

NO.

LOWE'S
 2106 S. Christopher Columbus Blvd.
 Philadelphia, PA 19148

and

PATRICK KIRBY
 3800 Aramingo Avenue
 Philadelphia, PA 19137

COMPLAINT
2S – SLIP AND FALL

1. Plaintiff, James Harvin, resides at 7960 Forrest Avenue, Philadelphia, PA 19150.
2. Plaintiff, Rence Harvin, is the wife of plaintiff James Harvin and resides at 7960 Forrest Avenue, Philadelphia, PA 19150.
3. Defendant, Lowe's, regularly conducts business 2106 S. Christopher Columbus Blvd., Philadelphia, PA 19148.
4. Defendant, Patrick Kirby, is an employee of defendant Lowes at 3800 Aramingo Avenue, Philadelphia, PA 19137 and was the Managing Employee of defendant Lowes located at 2106 S. Christopher Columbus Blvd. in the City of Philadelphia, PA 19148 on or about April 25, 2012.

5. Defendant, Patrick Kirby, managed and maintained the premises located at 2106 S. Christopher Columbus Blvd. in the City of Philadelphia, PA 19148, at all relevant times.

6. On April 25, 2012, plaintiff, James Harvin, was a business invitee at Lowes located at 2106 S. Christopher Columbus Blvd., Philadelphia, PA when he was injured as a result of a defect in the premises.

7. Defendants were negligent as follows:

- a. failure to warn;
- b. failure to eliminate the hazard;
- c. failure to inspect;
- d. failure to prevent the accident herein;
- e. failure to alert the employer about the hazard.

8. As a direct and proximate result of the occurrence aforesaid, Plaintiff sustained injury to his eye, ruptured globe with anterior vitrectomy iris suture with repositioning of the left eye. Eye pain, eye rupture, left eye ruptured globe, personal injuries, as well as acute emotional tension and behavior state and severe shock to his nerves and nervous system, all of which caused him great pain and agony and caused an impairment of earning ability, all of which may continue into the future to his great financial detriment and loss, and all are of a serious and permanent nature.

9. Further, as a direct and proximate result of the occurrence aforesaid, the Plaintiff was obliged to expend various sums of money for medical care, treatment and medicines in and about endeavoring to treat for his injuries, all of which may continue into the future to his great financial detriment and loss for the care and recovery.

WHEREFORE, Plaintiff demands judgment in his favor as against the Defendants in an amount sum in excess of Fifty-Thousand Dollars (\$50,000.00) plus delay damages pursuant to Rule 238, plus costs, expenses, and attorneys fee, and any other amount this Honorable Court deems just and reasonable.

COUNT II - LOSS OF CONSORTIUM

10. Paragraphs 1 through 8 are incorporated herein by reference.

11. Plaintiff, Renee Harvin, was and is at all relevant times, the wife of James Harvin.

12. As a result of the occurrence aforesaid, Renee Harvin has lost the love, aide, society and comfort of the plaintiff, James Harvin.

WHEREFORE, Plaintiff demands judgment in his favor as against the Defendants in an amount sum in excess of Fifty-Thousand Dollars (\$50,000.00) plus delay damages pursuant to Rule 238, plus costs, expenses, and attorneys fee, and any other amount this Honorable Court deems just and reasonable.

BRUCE M. ROTFELD, P.C.

/s/ Bruce M. Rotfeld, Esquire
Bruce M. Rotfeld, Esquire
Attorney for Plaintiff

VERIFICATION

I, Bruce M. Rotfeld, Esquire, being duly sworn according to law, deposes and says he is familiar with the facts in the foregoing Amended Complaint, and that the facts set forth therein are true and correct to the best of my knowledge and belief.

I further understand that the statements made are subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

BRUCE M. ROTFELD, P.C.

/s/ Bruce M. Rotfeld, Esquire
Bruce M. Rotfeld, Esquire
Attorney for Plaintiff